

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
BFI WASTE SYSTEMS OF VIRGINIA L.L.C.
Permit No. VAR 540006**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and BFI Waste Systems of Virginia L.L.C., for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.

6. “BFI” means BFI Waste Systems of Virginia L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the BFI –Old Dominion Landfill located in Richmond, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means VPDES permit No. VAR540006, which became effective June 30, 1999, and expires June 30, 2004.

SECTION C: Findings of Fact and Conclusions of Law

1. BFI owns and operates the Facility in Henrico County, Virginia. This Facility is the subject of VPDES Permit No. VAR540006, which allows BFI to discharge stormwater associated with industrial activity into an unnamed tributary of Almond Creek in strict compliance with terms, limitations and requirements outlined in the permit.
2. On November 21, 2002, Department staff observed low pH readings at the Route 5 bridge on Almond Creek. Staff traced the source of the low pH readings back to the BFI property. Department staff observed three water quality standard violations of pH during inspections conducted on November 21, 25, and December 2, 2002. The pH of the discharges were 3.14 SU, 3.14 SU, and 3.44 SU respectively.
3. On December 13, 2002, the Department issued a Notice of Violation (NOV) to BFI citing the three above unauthorized discharges that contravened water quality standards for pH.
4. Department staff observed ten additional water quality standard violations of pH during inspections conducted on December 10, 12, 27, of 2002, January 2, 13, 22, 29, February 7, 21, and 23 of 2003. The pH of the discharges were 4.23 SU, 4.66 SU, 4.58 SU, 4.52 SU, 3.43 SU, 3.75 SU, 3.69 SU, 4.76 SU, 3.69 SU, and 3.56 SU respectively.
5. The Department met with BFI on January 15, 2003, to discuss the violations and the solution of the pH problem. BFI and the Department had previously determined that the low pH readings were not due to leachate from the landfill. The low pH problem results from: 1) the facility’s excavation and stockpiling of pyritic clay soils that oxidizes and cause stormwater runoff to be acidic; 2) the collection of low pH groundwater from the underdrain; and, 3) water contained in a number of lakes and ponds created by the former owners quarrying operations which exposed strata of pyritic clay. BFI stated that it would begin liming in the major ponds that influence the pH in the discharge that leaves the property.

6. The Department met with BFI on June 5, 2003, to discuss the proposed Order and the results of the liming on the facilities ponds. BFI stated that it would not be economically feasible nor appropriate to use lime to adjust the pH in the water contained in ponds and lakes that did not receive any inflow or influence from the process wastewater generated on site. BFI proposed that several internal sampling points exist at the facility that can be used to show compliance with standards for pH before the stormwater associated with BFI's industrial activity is mixed with water from the quarry lakes and ponds created by the former owner.
7. On August 26, 2003, the Department met with BFI to decide on a plan of action for addressing the low pH issues at the facility. The Department informed BFI that a VPDES Individual Stormwater Permit may be required for this BFI facility. BFI stated that the stormwater generated on site that is associated with their industrial activity does not influence the pH in Almond Creek to nearly the same degree as the quarry lakes and ponds on site and that a VPDES General Permit is adequate. The Department stated and BFI agreed that an in-depth study of the causes of the pH issues needs to be conducted to determine the appropriate permit.
8. On December 16, 2003, the Department met with BFI to discuss completely separating any stormwater runoff from BFI's industrial activities from the quarry lakes and ponds on site. In accordance with this Consent Order, BFI will file for an Individual VPDES permit and present a conceptual engineering report (CER) to implement the separation of its stormwater runoff from its industrial activities from the quarry lakes and ponds on site.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders BFI, and BFI agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders BFI, and BFI voluntarily agrees, to pay a civil charge of \$28,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for BFI. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of BFI, for good cause shown by BFI, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to BFI by DEQ on December 13, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein. Nonetheless, the Board agrees that it will take no action, nor issue any notices of violation, with respect to stormwater discharges that violate pH standards solely because of the effect on those discharges of low pH soils in the Facility's stormwater retention pond, prior to the separation of stormwater runoff from industrial activities, from the quarry lakes and ponds on site, as set forth in the conceptual engineering report (CER).
3. For purposes of this Order and subsequent actions with respect to this Order, BFI admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BFI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BFI declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by BFI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. BFI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BFI shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BFI shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 72 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BFI. Notwithstanding the foregoing, BFI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. BFI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to BFI.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve BFI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, BFI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2004.

Robert G. Burnley, Director
Department of Environmental Quality

BFI voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2003, by _____, who is
(name)

_____ of BFI, on behalf of the Company.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

BFI shall:

1. **On or before April 1, 2004**, submit to the Department a conceptual engineering report (CER) with an implementation schedule suitable for approval and an application for an individual VPDES permit, for the control of pH sufficient to ensure that discharges from industrial activities on the property do not contravene 9 VAC 25-260-50, the water quality standard for pH. The CER will detail a plan for separating the stormwater runoff from BFI's industrial activities and industrial process discharges from most or all of the quarry lakes or ponds on the site. The quarry lakes and ponds that are completely separated from the stormwater management system handling runoff from BFI's industrial activities shall not be covered by the permit issued pursuant to this Order. Once approved by the Department, the plan and schedule shall become a part of and enforceable under the terms of this Order.
2. **Beginning immediately upon issuance of this Order**, monitor pH once per week from the location marked on Appendix B, and submit a report to the Department once a month with the results of the pH analysis. This monitoring and reporting requirement shall cease upon complete separation of the stormwater runoff from industrial activities from the quarry lakes and ponds on site, as set forth in the CER.
3. **Within thirty days of the issuance of this Order**, collect groundwater from the under-drain system, adjust the pH to acceptable levels, and store for use on the facility for dust control **or** cycle the water into the treatment process.
4. **Beginning from the effective date of this Order and continuing until notified by the Department**, submit to the Department quarterly progress reports on the status of the above corrective action measures. The reports shall be due August 1, November 1, February 1 and May 1 of each year.

Pursuant to this Order, once approved by the Department, the above plans and schedules shall become a part of and enforceable under the terms of this Order. Communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

BFI shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion**.